

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3933 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

MOHANGAR NAROTAMGAR GOSWAMI

Versus

DISTRICT MAGISTRATE

Appearance:

MR NIRAV C THAKKAR for Petitioner

MR AJ DESAI AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 25/01/2000

ORAL JUDGEMENT

#. Heard Mr. Nirav Thakker, learned advocate for the petitioner and Mr.A.J.Desai, learned AGP appearing for respondents No. 1, 2 & 3.

#. The detention order dated 10-5-99 passed by

respondent No. 1 - The District Magistrate, Jamnagar against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 ('PASA' for short') is challenged by way of this present petition under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at Annexure-B interalia indicates that three prohibition cases were registered against the petitioner at Jamnagar City "A" Division Police Station on 20-8-98, 12-4-99 and 13-4-1999 respectively. That in each case, the country made liquor was seized from the possession of the petitioner / detenu. That out of the said 3 cases except 1st case, remaining two cases are pending for investigation, while 1st case is pending for trial.

#. That on assurance of anonymity, three witnesses have given statement regarding the bootlegging activities of the petitioner vide statement on 16-4-1999 while one witness has given statement on 17-4-1993 relating to anti social activities of the petitioner, however, no date of the incident has been specified by them. That on the basis of the said material, the respondent No. 1 - The District Magistrate, Jamnagar as the detaining authority has come to the conclusion that the petitioner / detenu is a bootlegger within the meaning of Section 2(b) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial activities, and as such, detention order under PASA is necessary and hence the impugned order is passed.

#. The petitioner has challenged the impugned order of detention on numerous grounds. It has been contended on behalf of the petitioner at bar that in the criminal case registered against the petitioner vide C.R. No : 167 of 1999 dated 13-4-1999 which is made basis for passing the impugned order. The petitioner was released on bail on 14-4-1999. That the detaining authority while passing the impugned order has failed to consider the less drastic remedy like cancellation of bail as available under Section 437(5) of CrPC, as such on account of the said non application of mind, the subjective satisfaction having been vitiated, the detention order is rendered invalid.

#. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND OTHERS 1995 (2) GLR 1134, the

Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the CrPC claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction, thus rendering the detention order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal No : 1056 of 1999 decided on 15-9-99 by this Court (Coram : C.K.Thakker & A.L.Dave, JJ.).

#. In the instant case, on scrutiny of papers, it appears that, the detention authority has observed in the grounds of detention that the petitioner has been released on bail in criminal case registered against him and has been committing another offence as such petitioner does not have fear of law and hence, the detention order is necessary. The said observation suggests that the detaining authority authority has failed to consider the aspect of claiming cancellation of bail to prevent the petitioner from continuing his alleged anti social activities. Under these circumstances, the impugned order could hardly be uphold.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 10-5-99 passed by respondent No. 1 - The District Magistrate, Jamnagar against the petitioner is hereby quashed and set aside. The petitioner - MOHANGAR NAROTAMGAR GOSWAMI is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

Date : 25-1-2000 [A.K.Trivedi, J.]

#kailash#